Solanki Marmo Grani Pvt. Ltd. Vs. State of Rajasthan & Ors.

SB Civil Writ. Petition No.6107/2006

Date of Order: 06th December, 2006.

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr. B.L.Purohit for the petitioner/s.

Mr.M.R.Singhvi] for the respondent/s.
Mr.P.S.Bhati]
Mr. Vikas Balia]
Mr.K.L.Thakur, Addl.Advocate General.

BY THE COURT;-

The present writ petition relates to challenge to grant of mining lease to respondents No. 5 to 7. The petitioner himself was an applicant whose application has been rejected for the mines in question. Though the petitioner has filed a revision against the rejection under the Mining Law he has also chosen to file the present writ petition. A similar writ petition filed in the name of M/s Mewar Marbles has already been dismissed by this Court but the petitioner raised certain grounds which are to be dealt with.

The case of the petitioner is that there is a policy framed by the State of Rajasthan known as Marble Policy 2002 (hereinafter referred to as 'the Policy of 2002'). Its clause 12 and 18 are repugnant to rule 7 of the Marble Development and Conservation Rules 2002 (hereinafter referred to as 'the Rules of 2002'). The case of the petitioner is that under rule 7 of the Rules of 2002 minimum area which can be allotted for mining is prescribed to be four hectares. Rule 7 is quoted herein below for ready reference :-

> "7. Minimum and maximum area for grant of a mining lease:- (1) The minimum area that may be granted under a lease for ensuring mining activities to optimum depth shall not be less than four hectares with the restriction that the dimension on any one side of such area shall not be less than 200 metres.
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> (2) The maximum area that may be granted under a mining lease shall not exceed fifty hectares ;
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> Provided that the State Government , if it is satisfied on the basis of proposed production level, geological, topographical or other conditions, may for the reasons to be recorded in writing,

> grant a lease over an area more than the maximum area or less that the minimum area specified under this rule."

The case of the petitioner is that though the proviso of this rule provides that a lease can be granted for an area less than or more than the maximum or less than the area prescribed under this rule but such lease has to be granted by the State Government on its satisfaction. In the instant case, the case of the petitioner is that clause 12 and clause 18 of the Policy of 2002 are repugnant to rule 7 of the Rules of 2002. Clauses 12 and 18 of the Policy of 2002 are quoted herein below for ready reference:-

> **"12.Grant of mining lease or quarry licence in Khatedari or other private land,-** In case of Khatedari or other private land mining lease /quarry licence shall be granted or renewed in favour of Khatedar of private land holder or such other person having acquired surface rights from the Khatedar or land owner on the basis of mutual legal agreement and subject to the conditions that the applicant agrees to undertake mining operations by deploying the mine machinery prescribed in the Annexure -1:

Provided that in case of Khatedari and other private land, the area which was previously held or which is being held under a mining lease / quarry licence or in respect of which the order of grant has been made but the same has been revoked shall be treated as available for grant after the date of termination or surrender or revocation of the mining lease / quarry licence without a notification issued under the provisions of Rule 59 or 27-C of the Rajasthan Minor Mineral Concession Rules, 1986 as the case may be, for declaring the area free for re-grant;

Provided further that the size of area granted in the Khatedari or other private land shall as far as possible be 4.00 hectares subject to the condition that if the applicant is Khatedar or land holder himself where the size of area maybe upto the extent of land holdings in his favour but in no case it shall be less than 0.50 hectares;

Provided also that where the available area is less than 2.0 hectares and surrounded by two or more existing lease / quarry licence as provided in Rule 11 of the Rajasthan Minor Mineral Concession Rules,

> 1986, it shall be granted to any one adjoining lessee/ quarry on the basis of No Objection Certificate of the Khatedar / land holder to such person and the new area shall be added to the existing lease /quarry licence."
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> "18. Mining Operations to be in accordance with mining plan, - (1) Where area of lease is more than 4.00 hectares Mining Operations shall be undertaken in accordance with duly approved mining plan.
>
> (2) Modification of approved mining plan during currency of mining lease also require proper approval. "

According to the petitioner, in terms of clause 12 of the Policy of 2002 an area less than 4 hectares can be allotted and in doing so it has been provided in clause 18 of the Policy of 2002 that requirement of submitting a duly approved marble plan has to be there. But in awarding the lease to Respondent Nos.5 to 7 this requirement was not seen. These two clauses , i.e. 12 and 18 of the Policy of 2002 are in contravention with rule 7 of the Rules of 2002 and, therefore, lease granted in favour of the respondent No. 5 to 7 is contrary to rule 7 of the Rules of 2002 and, therefore, it should be

struck down, so also clause 12 and 18 of the Policy of 2002 be struck down. Because the respondent Nos. 5 to 7 have been allotted land for mining which is less than four hectares and before permitting the mining operations duly approved mining plan was not put before the Department as is required under clause 18 of the Policy of 2002.

The learned counsel for the petitioner further urged that in allotting a mining lease in favour of respondent Nos. 5 to 7 if at all any reduction in size is to be made it has to be made by the State Government under the proviso to rule 7 of the Rules of 2002. In that proviso the conditions which have been mentioned are proposed production level, geological, topographical or other conditions . According to the learned counsel, the expression 'other conditions ' have got to take its meaning from the expressions used earlier and has to be analogous to them as the rule of *ejusdam gen eris* has to be applied. He places reliance on the Supreme Court decisions in Excise , Bombay vs. Maharashtra Fur Fabrics Ltd. (2002) 7 SCC, 444) wherein their Lordships of the Supreme Court have held as under:

> “general terms following particular expressions take their colour and meaning as

that of the preceding expressions, applying the principle of *ejusdem gen eris* rule, therefore, in construing the words ***" or any other process".***

In State of Karnataka vs. Kempaiah (AIR 1998 SC 3047) the Hon'ble Supreme Court held :

> "A perusal of the definition indicates that it encompasses administrative action taken in any form whether by way of recommendation or finding or 'in any other manner' e.g., granting licenses or privileges, awarding contract, distributing Government land under statutory Rules or otherwise or withholding decision on any matter etc. The expression ' in any other manner' takes it in fold the last mentioned categories of administrative actions. ..... The expression ' in any other manner' contains general words which construed literally should receive their full and natural meaning but when they follow specific and particular words of the same genus."

In M.M.B.Catholics vs. M.P.Athanasius (AIR 1954 SC, 526) it has been held by the Supreme Court in the following terms:

> " It has been held by the Judicial Committee that the words " any other sufficient reason" must mean " a reason sufficient on grounds, at least analogous to those specified in the rule ".

Thus , according to the learned counsel, the other conditions cannot give a free hand to the respondents . The conditions given in the proviso has to be followed. The State cannot have a free say and its action has to be guided by the conditions given in the proviso. In the instant case, no such guidance has been sought from the conditions prescribed in the proviso.

The learned counsel for the petitioner has further urged that the State Government , before passing an order dated 14th March 2005 , Annx.9 has not shown the source of authority of passing the order. The order passed is not in conformity with Article 166 of the Constitution of India because the same has not been passed in the name of the Governor . Further the same has not been gazetted and, therefore, the delegations made under Section 9 was not sufficient to confer powers on the Director to grant the mining lease. The learned counsel for the petitioner further urged that the Director , Mines has

purportedly exercised powers under rule 11 of the Rajasthan Mining Mineral Concession Rules 1986. (hereinafter referred to as the Rules of 1986'). Rule 11 of the Rules of 1986 reads as under:-

> " 11. Area of Mining Lease
>
> (1)The mining lease shall be granted for such area as the Government may deem fit. The Director may fix the area for the grant of a mining lease for a particular area, but it shall not be less than [1 hectare]. This limit shall however, not apply to the gap areas lying between two or more mining leases which are less than the minimum prescribed size.
>
> [Provided that where the gap area available free for grant is up to 50% of the prescribed size of the plot and surrounded by three or more ".

The order has been passed by the Joint Director who had no authority under the rules because it is only the Director who can do so . The learned counsel further asserted that the Rules of 1986 is a kind of legislation which has the tendency of offending the Central Rules because rule 47 prescribes the mode in which delegation can

be made by the Central Government. Such delegation has been provided to be made in a particular manner and fashion. The Director having not been delegated the powers he could not have done so and in any case rule 11 of the Rules of 1986 is framed by the State Government. Under Section 18 of the Act of 1957 (hereinafter referred to as ' the Act of 1957') the Central Government has been authorised to frame rules. Under Section 15 the State Government has been authorised to frame rules and the rules framed by the Central Government has to prevail. The Rules of 1986 having been framed under the authority of rule 15, cannot override the rules framed by the Central Government under section 18 of the Act of 1957 and thus rules of the Central Government shall prevail over the rules framed by the State Government.

The learned counsel for the petitioner has further urged that Section 24A of the Act of 1957 makes a clear provision that the lease could have been granted to the petitioner. Section 24A of the Act of 1957 is quoted herein below for ready reference:-

> "24 A. Rights and liabilities of a ; holder of prospecting licence or mining lease, - (1) On the issue of a [reconnaissance permit, prospecting licence

or mining lease] under this Act and the rules made thereunder, it shall be lawful for the [holder of such permit, licence or lease], his agents or his servants or workmen to enter the lands over which [such permit, lease or licence had been granted] at all times during its currency and carry out all such [reconnaissance, prospecting or mining operations] as may be prescribed;

Provided that no person shall enter into any building or upon an enclosed court or garden attached to a dwelling- house (except with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

(2)The holder of a [reconnaissance permit , prospecting licence or mining lease] referred to in sub-section (1) shall be liable to pay compensation in such manner as may be prescribed to the occupier of the surface of the land granted under [such permit, licence or lease] for any loss or damage which is likely to arise or has arised from or in consequence of the [reconnaissance,

mining or prospecting operations] .

(3) The amount of compensation payable under sub-section (2) shall be determined by the Ste Government in the manner prescribed.] ”.

To negate the argument that he is not the holder of surface rights, the petitioner relies on the provisions that permit holder of lease or licence has the right to enter the land over which such permit or licence has been granted and, therefore, it was not necessary to have obtained the prior permission of the surface rights holder. Learned counsel for the petitioner has further urged that under section 89 of the Rajasthan Land Revenue Act 1956 (hereinafter referred to as the Act of 1956') the petitioner had a right to enter the land and, therefore, merely because he was not having the surface rights his right to enter into the land could not have been denied. The learned counsel for the petitioner further urged that under rule 47 of the rules of 2002 the powers of the State Government for delegation should have been gazetted. Rule 47 of the Rules of 2002 reads as under:-

“ 47. Delegation of powers:- The State

> Government may, by notification in the Official Gazette, direct that any power exercisable by it under these rules may, in relation to such matters and subject to such conditions, if any, as may be specified in the notification be exercisable also by such officer or authority subordinate to the State Government"

Directors 's authorisation is without application of powers in terms of rule 47. In any case, the order has been passed by the Joint Director who was not the concerned authority and, therefore, the lease granted cannot be countenanced to be one which has the legal force. Thus, the lease granted to the respondent Nos. 5 to 7 deserves to be struck down and the refusal made in the case of the petitioner deserves to be quashed.

Replying to the contentions of the petitioner the respondents have submitted that having filed the revision petition the petitioner could not have filed the present writ petition challenging the same order.

The State has taken a stand that under Section 15 of the Act of 1957 Rules of 86 has been framed. They are for specific

purposes. The State Government has powers to make rules in respect of mines and minerals, regulating the grant of quarry lease , mining lease etc. in connection with minor minerals. Such rules cannot be held to be repugnant to the rules framed by the Central Government under section 18 of the Act of 1957 because Section 18 empowers the State Government to frame rules in relation to the development of the minerals. Rules regarding grant of Mining lease are to be framed by the State Government under Section 15. They are under the powers of specific nature. Rules framed under the specific provisions of character will have to prevail over the rules framed under the general powers. In that light of the matter the challenge of the learned counsel for the petitioner to clause 12 and 18 of the Policy of 2002 cannot be made.

The learned counsel for the State has further urged that the order dated 14th March 2005 , Annx.9 has been passed by the Secretary of the Government, exercising powers as the State Government and the provisions of Art.166 of the Constitution of India cannot be read to be one annulling the form of this order because the Secretary, under the rules of business is authorised to act on behalf of the State Government and the order having been passed under the signatures of the Secretary for all practical purposes would

be the order of the State Government.

The learned counsel for the State has further asserted that the joint Director had passed the orders under the orders of the Director after there was a telephonic communication communicated to him by the Director. Such record was placed wherein there is evidence that the Joint Director had acted under the orders of the Director and in any case the joint director is one who has the colour of the authority of Director. The learned counsel for the State has further urged that the Director has passed the orders under rule 11 of the Rules of 1986 , wherein Director has been empowered to pass the order in question. A reference in this regard has been made to rule 11 of the Rules of 1986 where he has been granted powers to reduce the area to the extent of one hectare and, therefore, the action of the State cannot be impugned .

As regards the powers claimed by the petitioner under Section 24A of the Act of 1957 is concerned, it has been stated by the learned counsel for the State that powers under section 24A are delineated for the purpose of those who have a lease granted in their favour. The petitioner was neither the holder nor there was grant of any lease in his favour and, therefore, he cannot claim any right in this regard.

The question of Section 89 of the Land Revenue Act cannot come into picture because the surface rights in the case of private land are required to be first seen as to who possess them. That being the position , nothing comes in favour of the petitioner.

I have heard learned counsel for the petitioner and have given my thoughtful consideration.

The challenge of the petitioner to clause 12 and 18 of the Policy of 2002 has to be judged, in the light of the powers under which, the Policy of 2002 has been constituted. The Marble Policy has been construed by the State Government under the powers conferred on it under rule 65A of the Rules of 1986. Thus any rule framed under these rules, by exercising powers of relaxation, cannot be impugned. Powers of rule 65A of the Rules of 1986 have already been recognised by this Court in upholding the validity of rule 65 A. Once the power of validity is recognised under Section 65A of the Rules of 1986, the framing of these rules cannot be said to be in any way subservient to any other legislative provision. Under clause 12 of Marble Policy procedure to grant lease of any quarry licence, in a khatedari of private land , has been prescribed. It is the case in hand, because the surface rights are being held in the land in

question, by a private Trust .That Trust has consented the rights in favor of the grantees i.e. Respondent Nos 5 to 7. Clause 12 of the Policy of 2002 prescribes that an area of less than 4 hectares , as and when considered for grant of mining lease, production of a duly approved mining plan is not necessary. The Policy of 2002 has been construed to have been properly constituted under rule 65A of the Rules of 1986 by this Court. The lease in favor of respondent Nos. 5 to 7 can, therefore, be construed as rightly done under the provisions of the Policy of 2002.

Now comes the argument of the leaned counsel for the petitioner that the clause 12 and 18 of the Policy of 2002 is violative of rule 7 of the Central Rules, i.e. the Rules of 2002. Reference in this regard may be made to the powers of the State Government and Central Government under the Act of 1957. Section 15 of the Act of 1957 makes a specific provision about the allotment of quarries and provides for framing of rules by the State Government for the specific purposes of grant of lease in respect of the mining minerals. Thus, the State Government has the power of enacting rules by a specific authorisation. The Central Government under Section 18 has the general powers of development of minerals in India as per the protection of of environment by controlling pollution and

conservation. Thus the powers defined under Section 18 of the Rules is of general character. General provisions are required to give weight to the specific provisions. Thus, the right of the Central Government is considered by this Court under section 18 to be general in character for mineral development and not for allotment. The power of the State Government is considered to be specific and in this the law for regulating the grant of lease for minor minerals is specified. The dictum of law *Generalibus Specialia Bus Non Derogant.*

Thus, this Court is of the opinion that rule 12 and 18 of the Policy of 2002 , as framed by the State Government, being framed under the Rules of 1986 rule 65A cannot be held repugnant to rule 7 of the Central Rules framed under the Rules of 2002, as the rules of 2002 have been framed under the general powers whereas the Rules of 1986 have been framed under the specific powers specified for the allotment.

The argument of the learned counsel for the petitioner that under rule 11 of the Rules of 1986 , the powers as exercised by the Director could not be exercised in the light of rule 7 is also not justifiable as has been held by this Court that Rules of 1986 have been

framed under the specific powers of the Act of 1957 whereas Rules of 2002 have been framed under the general powers. Therefore, 1986 rules will govern the grant in favor of respondent Nos. 5 to 7 . That being the position the Director under the Rules of 1986 could allot an area less than one hectare.

It may be held regarding the order of Government of 14th March 2005. The order having been passed by the Secretary under the Business Rules , if it has not been framed under Art. 166, it is not required to be given a serious thought as the lease has been granted by the Director under the authority of rule 11 of 1986 and under the Policy of 2002 under clause 12 and 18 where the order of grant of lease to respondent Nos. 5 and 7 has been made in the right perspective.

The question of other conditions being governed by the dictum of *Generalibus Specialia Bus Non Derogant.* is not required to be gone into as the Director, under the rules of 1986 had the authority and the order having been passed by the Joint Director under the instructions of the Director is an order of the Director who had the authority to grant lease under the rule 11 of the Rules of 1986. Hence the challenge made by the petitioner in this regard are of

no consequence.

The question of implication of Section 24A of the Act of 1957 would only be available to the petitioner if he had held a protecting lease of the area of which he was holding a licence. There being no such licence existing in his favour, invoking of Section 24A of the Act of 1957 is of no consequence. So also the question of implication of Section 86 f the Land Revenue Act is also not required to be gone into in favour of the petitioner. It cannot be pressed into service. The powers exercised by the Director were the powers granted to him under rule 11 of the Rules of 1986 . Further , clause 12 of the Policy of 2002 gave it a cover of legitimacy.

In the light of the above discussion, there is no force in the writ petition, therefore, the same is hereby dismissed.

(BHAGWATI PRASAD), J.

L.George